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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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10/500,077

06/23/2004

Stephen Proulx

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EXAMINER

BOUCHELLE, LAURA A

ART UNIT

PAPER NUMBER

3763

MAIL DATE

DELIVERY MODE

08/12/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                                       |                                      |  |
|------------------------------|---------------------------------------|--------------------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/500,077  | <b>Applicant(s)</b><br>PROULX ET AL. |  |
|                              | <b>Examiner</b><br>LAURA A. BOUCHELLE | <b>Art Unit</b><br>3763              |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 July 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,4,5,11 and 14-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11,15,21-24 and 26 is/are allowed.
- 6) ☒ Claim(s) 1,2,16-20,25 and 27-31 is/are rejected.
- 7) ☒ Claim(s) 4,5 and 14 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 June 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>7/8/10</u> . | 6) <input type="checkbox"/> Other: _____  |

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## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance or after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114.

Applicant's submission filed on 7/8/10 has been entered.

### ***Information Disclosure Statement***

2. The information disclosure statement (IDS) submitted on 7/8/10 was filed after the mailing date of the Notice of Allowability on 4/15/10. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

### ***Claim Rejections - 35 USC § 102***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

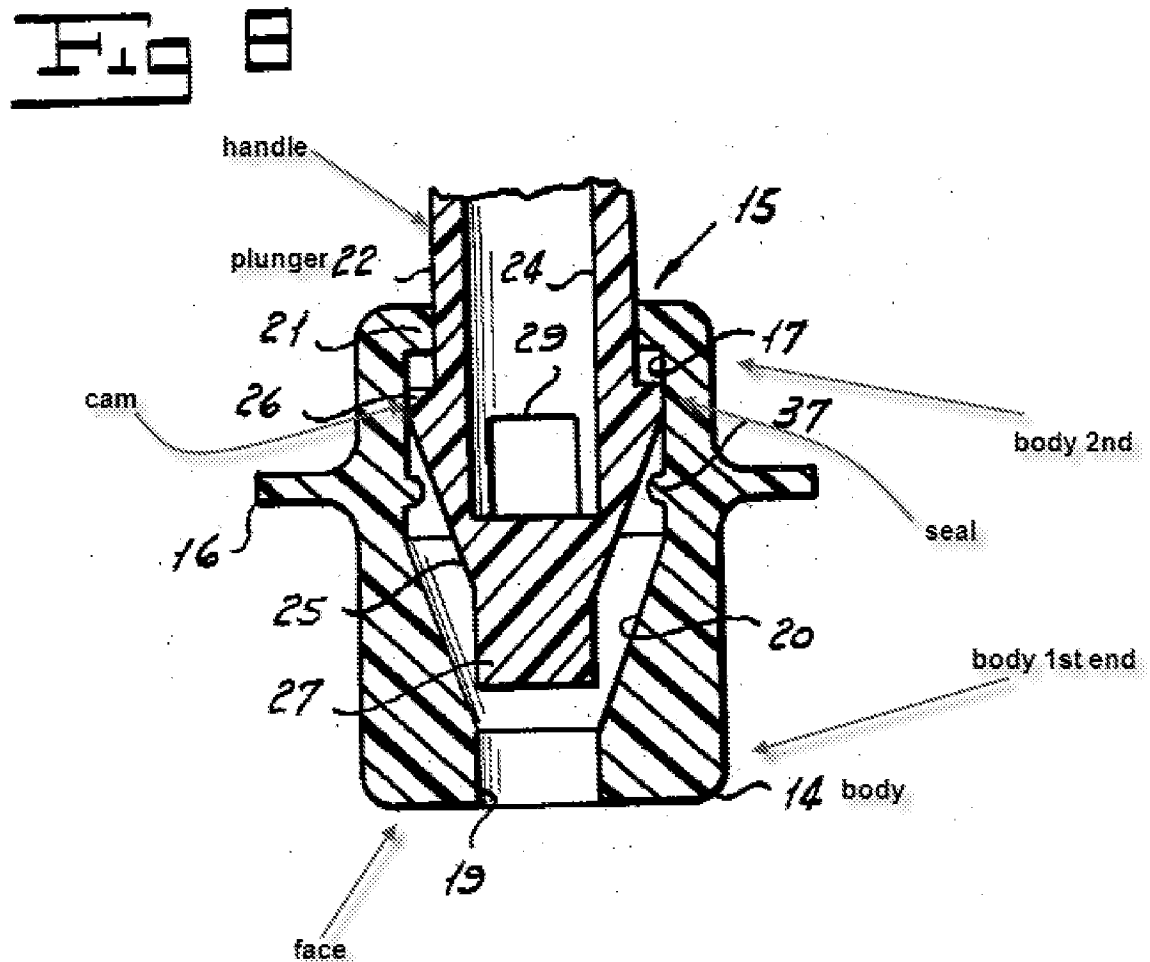
**4. Claims 1, 2, 16-20, 25, 27-31 are rejected under 35 U.S.C. 102(b) as being anticipated by Mackal (US 2,859,932).**

5. Regarding claim 1, the device of Mackal is considered to be a sterile device there is a gas tight seal between one end of the valve body and the other. Mackal discloses a fluid transfer device comprising a body 14 having a bore through its interior, a movable plunger 22 contained

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within the bore, the body and the bore are formed of plastic (col. 2, lines 39-42), the body having a first end and a second end, the first end having a face designed to be connected to an upstream component 12 (see Fig. 2), the plunger having a first end and a second end corresponding to the first and second ends of the body, the plunger having a shape corresponding to that of the bore and having a diameter less than that of the bore (necessarily because it is contained within the bore), a port formed on the second end of the plunger connectable to a downstream component 34 (see fig. 3), one or more seals 26 between the plunger and the bore to form a liquid tight seal between the plunger and the bore (col. 4, lines 50-54), the first end of the plunger when in a closed position being in alignment with the face of the body forming a sterile barrier (col. 4, lines 36-41) and a surface capable of being steamed ("a steamable surface" is considered to be a functional recitation, and *any* surface is capable of being steamed), a cam slot formed in the body (between inwardly extending wall 21 and annular rib 37), and a cam 26 formed on the outer surface of the plunger and contained within the cam slot, and a handle (the outer surface of the plunger that extends out of the body) to move the plunger within the bore from a closed to an open and then back to a closed position. See Fig. 8 copied and labeled below.

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6.

7. Regarding claim 2, the bore is a central bore formed through the entire length of the body (col. 2, lines 35-37, see fig. 8 above).

8. Regarding claim 16, Mackal discloses the sterile transfer device as described above, the bore having three sections each with a different diameter, the first section is the lower portion having the smallest diameter, the second section is the tapering middle section, and the third section is the top portion having the largest diameter. See Fig. 8 above.

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9. Regarding claim 17, the bore has a first set diameter (bottom portion), a second set diameter (top portion) having a diameter greater than the first set diameter, and a transition section (tapering middle section) between the first and second sections.

10. Regarding claim 18, the transition section has a linear progression in diameter (see Fig. 8 above).

11. Regarding claim 19, the plunger has an opening 29 adjacent the first end and fluid channel 24 connecting the opening to the second end of the plunger (col. 4, lines 44-50).

12. Regarding claim 20, the seal 26 is located on the outer surface of the plunger. See fig. 8 above.

13. Regarding claim 25, Mackal discloses the device as described above, and wherein the face includes an opening 19, and a portion of the plunger is contained within the opening of the face. See Fig. 9.

14. Regarding claim 27, Mackal discloses a fluid transfer device comprising a body 14 having a bore through its interior, the body having a first end and a second end, the first end having a face designed to be connected to an upstream component 12 (see Fig. 2), a movable plunger 22 contained within the bore, the plunger having a first end and a second end corresponding to the first and second ends of the body, the plunger having a shape corresponding to that of the bore and having a diameter less than that of the bore (necessarily because it is contained within the bore), the first end of the plunger when in a closed position being in alignment with the face of the body forming a sterile barrier (col. 4, lines 36-41) and a surface capable of being steamed ("a steamable surface" is considered to be a functional recitation, and *any* surface is capable of being steamed), a port connectable to a downstream component 34 (see

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fig. 3), one or more seals 26 between the plunger and the bore to form a liquid tight seal between the plunger and the bore (col. 4, lines 50-54). See Fig. 8 copied and labeled below.

15. Regarding claim 28, the plunger has a handle (the outer surface of the plunger that extends out of the body) to move the plunger within the bore from a closed to an open and then back to a closed position.

16. Regarding claim 29, the device comprises a cam slot is formed in the body (between inwardly extending wall 21 and annular rib 37), and a cam 26 formed on the outer surface of the plunger and contained within the cam slot.

17. Regarding claim 30, the device comprises a cam slot is formed in the body (between inwardly extending wall 21 and annular rib 37), and a cam 26 formed on the outer surface of the plunger and contained within the cam slot, and a handle (the outer surface of the plunger that extends out of the body) to move the plunger within the bore from a closed to an open and then back to a closed position.

18. Regarding claim 31, the one of more seals 26 form a liquid tight seal between the plunger and the bore when the plunger is in the open position. See Fig. 8.

***Allowable Subject Matter***

19. Claims 4,5,14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

20. Claims 11, 15, 21-24, 26 are allowed.

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***Response to Arguments***

21. Applicant's arguments filed 7/8/10 have been fully considered but they are not persuasive.

22. Applicant argues that Mackal does not disclose one or more seals between the plunger and the bore. The examiner disagrees. The claim does not require a *seal member* that is a component separate from the plunger and the bore. The claim only requires a seal between the plunger and the bore. A seal must be between two members, something must be sealed to something else. Mackal explicitly discloses that there is a seal between the plunger and the bore, i.e. no fluid can flow between the portion 26 of the plunger and the inner surface of the bore.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LAURA A. BOUCHELLE whose telephone number is (571)272-2125. The examiner can normally be reached on Monday-Friday 8-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 517-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Laura A Bouchelle  
Examiner  
Art Unit 3763

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Examiner, Art Unit 3763